

REMARKS

This Amendment is in response to the Office Action dated January 28, 2008, in which claims 22, 23, 31-40, 45, 47-52 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being nonelected Invention and species; claims 1, 3, 5, 7, 12, 16, 17, 41-44, 46, and 53 were rejected under 35 U.S.C. 102(e) as being anticipated by Barcay et al. (US 5,820,855); claims 1, 3-5, 7, 9, 12, 16-19, 46 were rejected under 35 U.S.C. 102(b) as being anticipated by Honuyu et al. (CN1155978); claims 1-0, 12, 15-19, 24-29, 41-44, 46 were rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dykstra et al. (WO9/07972); claims 1-9, 12, 15-19, 24-29, 41, 42, 53 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-11 of Barclay et al. (US 7,192,600); claims 1-6, 8, 9, 16 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-6 of Barclay et al. (US 5,820,855).

With this Amendment, claims 1, 3, 15, 17, 25 and 41 have been amended and claims 22, 23, 31-40, 45 and 47-52 have been canceled. In view of the following remarks, the application with pending claims 1-9, 12, 15-19 and 22, 24-29, 41-44, 46 and 53 is in condition for allowance. Reconsideration and notice to that effect are respectfully requested.

Rejections under U.S.C. § 102

In the Office Action, claims 1, 3, 5, 7, 12, 16, 17, 41-44, 46, and 53 were rejected as being anticipated by Barcay et al.; claims 1, 3-5, 7, 9, 12, 16-19, 46 were rejected as being anticipated by Honuyu et al. and claims 1-10, 12, 15-19, 24-29, 41-44, 46 were rejected as being anticipated by Dykstra et al. These rejections will be discussed in conjunction with one another. Independent claims 1 and 41 recite an insecticide stabilizer for stabilizing a water-sensitive insecticide against degradation by water. Independent claims 1 and 41 have also been amended to recite that the insecticide stabilizer constitutes between about 10% and about 30% by weight of the insecticidal composition. Barcay et al., Honuyu et al. and Dykstra et al. do not show, suggest, or teach an insecticide stabilizer that stabilizes a water-

sensitive insecticide against degradation by water. Barcay et al., Honuyu et al. and Dykstra et al. thus also do not show, suggest, or teach including between about 10% and about 30% by weight of an insecticide stabilizer in an insecticidal composition.

Barcay et al. teach an insecticidal composition using boric acid as an insecticide and a carrier to carry the components of the composition. The specification of Barcay et al. does not mention an insecticide stabilizer for stabilizing the insecticide against degradation by water. The Examiner has suggested that the fat can be the stabilizer. (Office Action dated 1/28/08, Page 2). However, the fat functions as a carrier and is not used to stabilize the insecticide from degradation by water. (Col. 2, line 64 through Col. 3, line 1). The function of carrying a component is not the same as stabilizing a component from degrading in the presence of water. As Barcay et al. do not show, suggest, or teach including an insecticidal stabilizer in the composition, Barcay et al. do not show, suggest or teach including between about 10% and about 30% by weight of an insecticide stabilizer in the composition.

Honuyu et al. teach an insectide gel using acephate as an insecticide component and a gelling agent to form a gel. The specification of Honuyu et al. does not mention an insecticide stabilizer for stabilizing the insecticide against degradation by water. The Examiner has suggested that the gelling agent can be the stabilizer. (Office Action dated 1/28/08, Page 3). However, the gel functions as a gelling agent to manufacture an insecticide gel that suits the eating habits of cockroaches and is not used to stabilize the insecticide from degradation by water (Honuyu, Page 4). The function of maintaining a component in a gel is not the same as stabilizing a component from degrading in the presence of water. As Honuyu et al. do not show, suggest, or teach including an insecticidal stabilizer in the gel, Honuyu et al. do not show, suggest or teach including between about 10% and about 30% by weight of an insecticide stabilizer in the gel.

Dykstra et al. teach a gelled, aqueous insect bait using either boric acid or acephate as an insecticidal-active ingredient and carrageenan ingredient as a gelling agent and an insect-attracting agent. The specification of Dykstra et al. does not mention an insecticide stabilizer for stabilizing the insecticide against degradation by water. In fact, the Examiner admits that the boric acid is not stated as being a stabilizer. (Office Action dated 1/28/08, Page 3).

There is also no mention in the specification that carrageenan is used to stabilize the insecticidal-active ingredient from degradation by water. Rather, the carrageenan functions “not only as the bait gelling agent but also as the insect-attracting agent.” (Page 1, lines 8-10; Page 3, line 38 through Page 4, line 3; Page 6, line 23; Page 7, lines 24; Page 9, line 4). The functions of maintaining a component in a gel and attracting insects are not the same as stabilizing a component from degrading in the presence of water. As Dykstra et al. do not show, suggest, or teach including an insecticidal stabilizer in the bait, Dykstra et al. do not show, suggest or teach including between about 10% and about 30% by weight of an insecticide stabilizer in the bait.

Barcay et al., Honuyu et al. and Dykstra et al. do not show, suggest, or teach an insecticide stabilizer for stabilizing the water-sensitive insecticide against degradation by water. Barcay et al., Honuyu et al. and Dykstra et al. also do not show, suggest, or teach including between about 10% and about 30% by weight of an insecticide stabilizer in an insecticidal composition. Claims 1 and 41 are therefore in condition for allowance. The rejections of claims 1 and 41 should thus be withdrawn and claims 1 and 41 allowed. In that claim 1 is in condition for allowance, the rejections of claims 2-9, 12, 15-19 and 22, 24-29, which depend therefrom, should be withdrawn and claims 3, 5, 7, 12, 16 and 17 allowed. In that claim 41 is in condition for allowance, the rejections of claims 42-44, 46 and 53, which depend therefrom, should be withdrawn and claims 42-44, 46, and 53 allowed.

Rejections under § U.S.C. 103

In the Office Action, claims 1-10, 12, 15-19, 24-29, 41-44, 46 were rejected as obvious over Dykstra et al. Claims 1 and 41 have been amended to recite that the insecticide stabilizer constitutes between about 10% and about 30% by weight of the insecticidal composition. Dykstra et al. do not show, suggest or teach an insecticide composition having an insecticide stabilizer constituting between about 10% and about 30% by weight of the composition. Even if both boric acid and acephate are included in the composition of Dykstra et al., with boric acid functioning as a stabilizer rather than an insecticide, Dykstra et al. only teaches including 5% boric acid. By contrast, amended claims 1 and 41 recite that

the composition includes between about 10% and about 30% by weight of an insecticide stabilizer, such as boric acid. As stated in the specification, "The relative weight percentage of insecticide to insecticide-stabilizer in embodiments can be, for example...from about 1 to about 2 wt-% acephate to from about 10 to about 30 wt-% boric acid, and most preferably from about 1 to about 2 wt-% acephate to about 15-20 wt-% boric acid insecticide-stabilizer based, for example, on the total weight of the bait composition." (Page 11, lines 16-23). The weight percentage of stabilizer in the composition effects the effectiveness of the bait.

"Thus, for example, when boric acid was at about 5 to about 10 wt-% the bait was more readily accepted by cockroaches but the acephate was less stable, that is shorter lived and less potent with time. Conversely, when boric acid was at 30-50 wt-% of boric acid, the bait is less readily accepted by cockroaches, that is less attractive and less likely to be consumed, but the acephate was more stable, that is longer-lived and more likely to be lethal with time." (Page 11 line 26 through page 12, line 2).

Dykstra et al. do not show, suggest, or teach including between about 10% and about 30% by weight of an insecticide stabilizer. Claims 1 and 41 are therefore in condition for allowance. The rejections of claims 1 and 41 should thus be withdrawn and claims 1 and 41 allowed. In that claim 1 is in condition for allowance, the rejections of claims 2-10, 12, 15-19 and 24, which depend therefrom, should be withdrawn and claims 2-10, 12, 15-19 and 24-29 allowed. In that claim 41 is in condition for allowance, the rejections of claims 42-44 and 46, which depend therefrom, should be withdrawn and claims 42-44 and 46 allowed.

Double Patenting Rejections

In the Office Action, claims 1-9, 12, 15-19, 24-29, 41, 42, 53 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-11 of Barclay et al. (US 7,192,600). Applicants will submit a Terminal Disclaimer with respect to US 7,192,600 in the event that claims 1-9, 12, 15-19, 24-29, 41, 42, 53 are indicated as allowable by the Examiner.

In the Office Action, claims 1-6, 8, 9, 16 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-6 of Barclay et al. (US

5,820,855). Applicants traverse the obviousness-type double patenting rejection of claims 1-6, 8, 9 and 16 over claims 1-6 of US 5,820,855. The present claims all recite the presence of boric acid in the composition as an insecticide stabilizer. As taught in the specification, the claims of U.S. 5,820,855 are all directed to using boric acid as an insecticide. Applicants respectfully submit that it would not be obvious to use an ingredient for a different function than the function taught in U.S. 5,820,855 in order to achieve the present invention.


Conclusion

In summary, pending claims 1-9, 12, 15-19 and 22, 24-29, 41-44, 46 and 53 are believed to be patentable for at least the reasons described above. Reconsideration and notice to that effect are respectfully requested. If there are any remaining questions, the Examiner is requested to contact the undersigned at the number listed below.

Respectfully submitted,

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